Supreme Court, U.S.
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No. 95-01584

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1995

CSX TRANSPORTATION, INC.

Petitioner

v.

TRACI L. CASTRO

Respondent

On Petition for Writ Of Certiorari
To The Court of Special Appeals Of Maryland

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. Whether, at summary judgement motion, Castro offered sufficient evidence that Petitioner failed to exercise reasonable care in the inspection of tank cars containing hazardous materials.

2. Whether, when reviewing Petitioner's summary judgement motion, the Maryland Court of Special Appeals correctly applied Federal FELA substantive law requiring Petitioner to exercise reasonable care for the safety of its employees when inspecting railroad cars containing hazardous materials at interchange.

TABLE OF CONTENTS

Page

QUESTIONS PRESENTED i

TABLE OF AUTHORITIES iii

STATEMENT OF FACTS 1

REASONS FOR DENYING THE WRIT 2

I. INTRODUCTION 2

II. THE COURT OF SPECIAL APPEALS DID NOT ERR IN HOLDING THAT TRACI CASTRO HAD MET HER BURDEN TO CREATE A JURY ISSUE AS TO THE REASONABLENESS OF CSX'S INSPECTION OF ACID FILLED RAILROAD CARS. 3

CONCLUSION 6

TABLE OF AUTHORITIES

CASES **Page**

Albrecht v. Baltimore & Ohio Rwy.,
808 F.2d 329 (4th Cir. 1987) 6

CSX Transportation, Inc. v. Easterwood,
507 U.S. 658 (1993) 5

Earwood v. Norfolk Southern Railway Company,
845 F.Supp. 880 (N.D. Ga. 1993) 5

Failing v. Burlington Northern Railroad Company,
815 P.2d 974 (Colo. Ct. App. 1991) 6

Millers Mut. Ins. Assoc. of Illinois v. Southern Rwy. Co.,
483 F.2d 1044 (4th Cir. N.C. 1973). 3

Norfolk & W. Rwy. Co. v. Liepelt,
444 U.S. 490 (1980) 4

Shenker v. Baltimore & Ohio Rwy. Co.,
374 U.S. 1 (1963) 3

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The Respondent, Tracy L. Castro, respectfully prays that the Petitioner's motion for a writ of certiorari be denied as to the judgement and opinion of the Court of Special Appeals of Maryland denying Petitioner's motion for summary judgement entered in this action on September 26, 1995.

STATEMENT OF FACTS

Castro adopts the Court of Special Appeals of Maryland's background facts. See Opinion of the Court of Special Appeals, *Pet. for Writ of Cert.* 2a-3a.

ARGUMENT

I. INTRODUCTION

In an attempt to get the attention of this Court, Petitioner has attempted to take this straightforward FELA case and turn it into an issue of major social and economic importance. The thrust of Petitioner's argument is that the Federal Railroad Administration and the Department of Transportation, in promulgating regulations for the transportation of hazardous materials, have somehow preempted the Federal Employers' Liability Act, thereby precluding Castro from recovering under the FELA for an on-the-job injury. The allegation that a federal regulatory administrative agency has the power to repeal an Act of Congress, as interpreted by this Court, is without merit. Petitioner has, in error, cited cases where state common law tort actions have been pre-empted. However, the procedural setting of this case is one of a state court applying federal law to a federal cause of action -- specifically, a Federal Employer's Liability Act claim.

Despite Petitioner's attempts to metamorphosize this purely summary judgment/factual issue into the imposition of an absolute duty to perform a specific type of inspection, the true issue is whether the lower court correctly applied federal law to find that Castro had met her burden to avoid summary judgment as a matter of law. In answer to this question, the Court of Special Appeals of Maryland (hereafter, "Appellate Court") simply held that "a jury could reasonably find that CSX had failed to conduct a reasonable inspection, thus summary judgment was improperly granted for the defendant." *Pet. for Writ of Cert. at 9a.*

The Federal Employers' Liability Act, originally enacted in 1906, continues to exist as a railroad worker's sole source of compensation for an on-the-job injury. The

only purpose for this appeal by Petitioner is to further delay the compensation Traci L. Castro needs and deserves.

II. THE COURT OF SPECIAL APPEALS DID NOT ERR IN HOLDING THAT TRACI CASTRO HAD MET HER BURDEN TO CREATE A JURY ISSUE AS TO THE REASONABLENESS OF CSX'S INSPECTION OF ACID FILLED RAILROAD CARS.

The Petitioner continues to rely heavily upon Millers Mut. Ins. Assoc. of Illinois v. Southern Rwy. Co., 483 F.2d 1044 (4th Cir. N.C. 1973). However, as the Appellate Court correctly held, such reliance is clearly misplaced.[1]

The binding authority on the Appellate Court was this Court's decision in Shenker v. Baltimore & Ohio Rwy. Co., 374 U.S. 1 (1963). Shenker is similar to the case at bar in that the Railroad had accepted at interchange a defective car from another railroad that eventually caused injury to an employee of the receiving Railroad. In Shenker, the Railroad urged that it had no prior notice of the defect on the car and it had no duty to perform an inspection at interchange to ensure that the car was safe. This Court rejected that contention, finding that, under the FELA, a railroad has an absolute and non-delegable duty to exercise reasonable care for the safety of its employees, including performing reasonable inspections of railroad cars accepted at interchange.

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[1] This Fourth Circuit opinion discusses a shipper's duty under North Carolina common law to inspect a rail car provided by a railroad. Millers was not an FELA case, applied state not federal law, and is in direct contradiction to this Court's interpretation of a Railroad's duty under the FELA. See Shenker v. Baltimore & Ohio Rwy. Co., 374 U.S. 1 (1963).

The Petitioner here similarly urges that it had no duty to inspect the subject defective acid car due to federal regulation. The Court of Appeals noted the fatal flaw in such an argument, remarking: "We fail to understand why an exterior inspection does not include the top of a tank car and why a walk around ground inspection of a tank car is synonymous with an exterior inspection...CSX's position is paradoxical." *Pet. for Writ of Cert. at 6a.*

The Appellate Court simply applied the correct legal standard to the factual situation at bar and found that the plaintiff had adduced sufficient evidence to avoid summary judgement.

The Petitioner's persistent urging that this Court should adopt as a matter of law the procedure by which railroads shall heretofore inspect hazardous material cars at interchange, thereby precluding injured workers from recovering under the FELA thereafter, would do exactly what the Petitioner so persistently urges the Appellate Court has done -- it would impose a Court created standard of care when the FELA requires reasonable care under the circumstances.

The FELA allows concurrent jurisdiction of suits arising thereunder in both federal and state courts. (45 U.S.C. § 56). Despite the fact that an FELA suit may be brought in the state court, the state court is still bound by federal substantive law and federal interpretation of the FELA. Norfolk & W. Rwy. Co. v. Liepelt, 444 U.S. 490 (1980). Thus, the Appellate Court has created no new "version of FELA common law--[casting off] years of settled federal case law" as urged by the Petitioner. *Pet. for Writ of Cert. at 9.* The Appellate Court, in holding that the Petitioner had a non-delegable duty of reasonable care to inspect railroad cars at interchange, and will be held liable to their employees for injuries caused by its failure to

exercise such care, is in accord with this Courts interpretation of the FELA.

The Petitioner's misunderstanding of the procedural setting of this case is further exemplified by reliance upon CSX Transportation, Inc. v. Easterwood, 507 U.S. 658 (1993). Easterwood involves federal preemption of state tort claims for injuries arising as a result of a railroad's compliance with federal regulation. Easterwood, and other cases cited by Petitioner, simply stand for the proposition that when federal law is in conflict with state law, including common law causes of action, the federal law must prevail. These cases have no application whatsoever to the federal cause of action at issue in this matter. It is axiomatic that a regulatory agency does not have the power to repeal an Act of Congress. Therefore, Acts of Congress, as interpreted by this Court, take precedence over regulations promulgated by a Federal Regulatory Agency. The FELA imposes a duty to exercise reasonable care for the safety of Petitioner's employees. No regulation or manual[2] of the Department of Transportation or the Federal Railway Administration can repeal this Act.

While federal regulations cannot preempt an Act of Congress, such regulations are evidence of the standard of care expected of employers.[3] However, the fact that the

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[2] Petitioner relies heavily on inspection manuals as if such materials were legal authority.

[3] The Petitioner continues to argue that the Castro's experts have relied on "erroneous conclusory opinions of law." Laws and regulations are relevant to the standard of care to be exercised by a Railroad under the FELA. Experts, retained to testify on the Petitioner's deviation from that standard, must use such laws and regulations as a basis of their opinion to the extent that they are relevant.

regulations are evidence of the standard of care does not make them determinative of the standard of care under FELA. Case-law is consistent in this regard, and no clarification is required. See Earwood v. Norfolk Southern Railway Company, 845 F.Supp. 880 (N.D. Ga. 1993)(the court rejected a defendant railroad's claim that the Federal Railroad Safety Act precluded a conductors FELA claim); Failing v. Burlington Northern Railroad Company, 815 P.2d 974 (Colo. Ct. App. 1991); and see Albrecht v. Baltimore & Ohio Rwy., 808 F.2d 329 (4th Cir. 1987) (In an FELA case, "regulations promulgated under OSHA provide evidence of the standard of care exacted of employers, but they neither create an implied cause of action nor establish negligence per se.", at 332).

CONCLUSION

Whether the Petitioner exercised reasonable care for the safety of Traci Castro is a matter of fact to be determined at the trial level. The FELA, as interpreted by this Court, imposes a duty of reasonable care upon railroads for the safety of their employees. As the Appellate Court correctly found, Castro produced sufficient evidence that a reasonable jury, with all inferences resolved in her favor, could find that she was injured by Petitioner's failure to exercise reasonable care under the circumstances, and for the foregoing, the Respondent respectfully prays that Petitioner's request for a writ of certiorari be denied.

This the 19th. day of April, 1996.

Respectfully submitted,

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